

**Quick-Lahmann Express, Inc. and Truck Drivers, Chauffeurs & Helpers, Local Union 100, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 9-RC-13669**

June 15, 1982

### DECISION AND DIRECTION

BY MEMBERS JENKINS, HUNTER, AND  
ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges in an election held April 10, 1981,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Hearing Officer's findings and recommendations only to the extent consistent herewith.<sup>2</sup>

The Employer is in the business of forwarding air freight by truck. The Petitioner filed a petition seeking to represent all of the Employer's truck-drivers. The appropriate unit, however, as set forth in the stipulation<sup>3</sup> included all full-time and regular part-time driver salesmen and dispatchers, and excluded, *inter alia*, all casual employees. The Board agent challenged the ballot of employee Charles Hurst on the ground that his name did not appear on the eligibility list. The Petitioner contended that Hurst was a regular part-time driver and thus included in the unit. The Employer contended that Hurst was a casual employee and therefore expressly excluded by the clear terms of the stipulation.

Following an investigation, the Regional Director for Region 9 found that substantial issues of fact existed with respect to Hurst's status which could best be resolved by a hearing. On February 23, 1982, a hearing was held before Hearing Officer Andrew G. Schmidt. On March 12, 1982, the Hearing Officer issued his report. He recommended that the challenge to Hurst's ballot be overruled on the ground that Hurst was, at the time of the

March 15, 1981, eligibility date, a regular part-time driver whose interests were closely enough aligned with those of unit employees so as to warrant his inclusion in the unit.

The Hearing Officer came to this conclusion notwithstanding his findings that (1) the Employer employs two classifications of drivers: roster and extra roster; (2) the roster drivers receive benefits such as vacations and health and life insurance, accumulate seniority, and are assigned regular routes; (3) the extra roster drivers, of whom Hurst is one, are utilized only on an on-call basis, receive no fringe benefits at all, and do not accumulate seniority for any purpose. Hurst signed an extra roster employment contract setting forth these terms and conditions of employment; (4) Hurst was hired as an extra roster driver and was on that roster for only 4 weeks prior to the eligibility date. He worked 0 hours his first week and averaged approximately 10 hours per week for the next 3 weeks. His pay was \$6.50 per hour compared to the \$7.60 received by the lowest paid roster driver; and (5) Hurst worked on a "frequent though unscheduled" basis and performed the same tasks as the roster drivers under the same supervision.

Contrary to the Hearing Officer, we find that Hurst is a casual employee and thus excluded from the unit by the express terms of the stipulation. Therefore, we find that the challenge to his ballot should be sustained.

The record reveals the following, in addition to the facts found by the Hearing Officer. The extra roster driver's employment contract signed by Hurst states that the Employer makes no commitment that an extra roster driver will ever be transferred to the regular roster. Further, the record shows that no such transfer has ever been made. Extra roster drivers, unlike roster drivers, do not have assigned trucks and do not maintain company credit cards. They also have separate payroll and timecard designations. Hurst's contract also stated an acceptance that "I am not guaranteed that I will receive any work at any time or receive a minimum number of hours each day, week, month, or year." During the entire 4-week period of his employment prior to the eligibility date, Hurst worked 30.5 hours on 4 different days. By contrast, the average workweek for the regular roster drivers during the same 4-week period was over 56 hours.

In view of the above, we conclude that the Hearing Officer's recommendation to overrule the challenge to Hurst's ballot is not supported by the record. In concluding that Hurst was a regular part-time employee, the Hearing Officer placed undue emphasis on the fact that the actual work

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: four votes for, and four against, the Petitioner; there were three challenged ballots, a number sufficient to affect the results of the election.

<sup>2</sup> In the absence of exceptions thereto, the Board adopts, *pro forma*, the Hearing Officer's recommendation to overrule the challenges to the ballots of Eske Wesley and Thomas Gleeson. We shall direct that their ballots be opened and counted.

<sup>3</sup> The stipulation sets forth the appropriate unit as:

All full-time and regular part-time driver salesmen and dispatchers employed by the Employer at its facility located at the Greater Cincinnati Airport, Boone County, Kentucky, excluding all casual employees, professional employees, guards and supervisors as defined in the Act.

tasks performed by Hurst were the same as those of regular roster drivers and done under the same supervision. The Board's test, however, for whether an employee is a regular part-time employee as opposed to a casual employee takes into account, in addition to this factor, the regularity and continuity of employment, tenure of employment, and similarity of wages, benefits, and other working conditions.<sup>4</sup> Using these standards, we find that Hurst did not work regularly during the period prior to the eligibility date with a reasonable exception of either transfer to the regular roster or even of continued employment on the extra roster. We find Hurst to be a casual employee excluded from the

unit by stipulation of the parties. Accordingly, we shall sustain the challenge to Hurst's ballot and order that the Regional Director open and count the ballots of the two employees discussed in footnote 2, *supra*.

#### DIRECTION

It is hereby directed that the Regional Director for Region 9 shall, pursuant to the Board's Rules and Regulations, Series 8, as amended, within 10 days from the date of this Decision and Direction, open and count the ballots of Eskel Wesley and Thomas Gleeson. The Regional Director thereafter shall prepare and cause to be served on the parties a revised tally of ballots, and thereafter issue the appropriate certification.

---

<sup>4</sup> See, e.g., *Muncie Newspapers, Inc.*, 246 NLRB 1088 (1979).